



ORDER BELOW APPLICATION (EXHIBIT 48) IN
MOTOR ACCIDENT CLAIM PETITION NO. 14/2012
(VIJAY VS. MEKALA & OTHS.)
(PASSED ON 20/02/2024)

Nature of the Application.

1. This is an application filed by the petitioner to permit him to amend the petition in compliance of order passed below the application (Exhibit 46).

Contents in the Application.

2. The petitioner has contended that through oversight, he failed to make compliance, as ordered below the application (Exhibit 46). In the interest of justice it is necessary to allow him to carry amendment, as ordered.

3. On these grounds, the petitioner has prayed to grant the application.

Contents in the Say of the Opponents.

4. The Opponents have filed say and strongly objected the application.

5. The Opponents have contended that the application is not legal and tenable. No sufficient reason is shown to grant the application.

6. On these grounds the Opponents are prayed to reject the application.

The Argument.

7. I have heard advocate for the petitioner and advocate for the opponents, at length.

8. They argued in consonance with their contentions in the application, say and keeping in mind established principles of law.

9. In order to avoid repetition, I will deal with the arguments at the time of discussing the points taken for consideration.

Relevant Statutory Principles/Provisions Regarding Enlargement of Time by the Court.

10. It is well settled principle in law that too technical or pedantic approach in cases of permitting any party to comply any order even at late stage is not called for. The Court have to adopt a justice oriented approach dictated by the upper most consideration that ordinarily a litigant ought not to be denied an opportunity of having his determined on merits unless he has, by gross negligence, deliberate inaction, or something akin to misconduct, dis-entitled himself from seeking the indulgence of the Court.

11. Section 148 of the Code of Civil Procedure (for short C.P.C.) reads as under :-

148. Enlargement of time :- Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.

12. Section 148 of the C.P.C. provides for enlargement of time by the Court. Where any period is fixed or granted by the Court for any act prescribed or allowed by the Code, Court has discretion to enlarge such period.

13. Section 151 of the C.P.C. reads as under :-

151. Saving of inherent powers of Court :-

Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to

make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

14. It is common ground that the inherent power vested in the Court under Section 151 of the C.P.C. cannot override the express provisions of the Law. In other words if there are specific provisions of the C.P.C. dealing with a particular topic and they expressly or by necessary implication exhaust the scope of the powers of the Court or the jurisdiction that may be exercised in relation to a matter the inherent power of the Court cannot be invoked in order to cut across the powers conferred by the C.P.C.. The prohibition contained in the C.P.C. need not be express but may be implied or be implicit from the very nature of the provisions that it makes for covering the contingencies to which it relates.

Keeping in mind these provisions/principles I proceed.

Points and Findings.

15. Upon hearing, the following points arise for my consideration and I record my findings thereon as under for the reasons stated below :-

	Points	Findings
1)	Can the order rejecting application (Exhibit 46) be set aside, as prayed for ?	Yes.
2)	What order ?	Application Granted. As per final order.

Reasons as to Point Nos. 1 and 2.

16. The petitioner was allowed to amend the petition as per

order below the application (Exhibit 46) forthwith. Thereafter, the petitioner filed application (Exhibit 47) to carry out amendment however, has failed to carry out amendment as per order below the application (Exhibit 46). The application (Exhibit 46) is rejected automatically for non compliance of order that is to say failure of the opponent to amend the petition, as ordered.

17. In my view, considering the nature of the petition it is necessary in the interest of justice to allow the petitioner to comply the order below application (Exhibit 46).

18. Further, if the petitioner is allowed to comply the order below the application (Exhibit 46), the matter can be decided on merits and it will help to avoid multiplicity of proceeding. Therefore, also order below the application (Exhibit 46) passed against the petitioner is required to be set aside.

19. According to the petitioner, it is necessary to allow the petitioner to comply the order below the application (Exhibit 46). In my view, considering the nature of the petition and rights involved an opportunity is required to be given to the petitioner, to comply the order below the application (Exhibit 46).

20. Above all, if the application is allowed no harm or injustice will be caused to the opponents but it will help to decide the petition on merit. Therefore, keeping in mind the legal principles, supra I am inclined to give an opportunity to the petitioner to comply the order below the application (Exhibit 46), in the interest of justice.

21. After giving thoughtful consideration to the facts of the case and the averments made by the petitioner in this application and arguments advanced by Shri. Kulal, advocate for the petitioner I am of

the considered view that for just decision of the petition it is necessary to give an opportunity to the petitioner to comply the order below the application (Exhibit 46), in order to find out the truth in the allegations made by the petitioner and the defence of the opponents.

22. I am unable to persuade myself with the arguments advanced on behalf of the Opponents that the application is not tenable on the grounds mentioned in their say. The reasons are :-

- That a litigant ought not to be denied an opportunity of having his determined on merits.
- That considering the legal principles under Section 148 of the C.P.C. the application is tenable and can be granted.
- That considering the legal principles under Section 151, I do not see any impediment to grant this application by using discretion in favour of the opponent.
- That in view of my findings above.

23. In short, relying on the principles/provisions discussed (supra) and under Section 148 and 151 of the C.P.C., supra and the facts and circumstances of the petition, I am inclined to grant this application, and allow the petitioner to comply the order below the application (Exhibit 46). For this view and findings I am buttressed by the following rulings :-

(i) In Mahant Ram Das V/s. Ganga Das, AIR 1961 SC 882, in the context of a failure to pay requisite court-fee within the time allowed by the Court subject to the conditional order that failure to pay would result in dismissal of the petition, the Hon'ble Supreme Court has observed :-

"How undesirable it is to fix time peremptorily for a future happening which leaves the Court powerless to deal with events that might arise in between, it is not necessary to decide in this petition. These orders turn out, often enough to be inexpedient. Such procedural orders, though peremptory (conditional decrees apart) are, in essence, in terrorem, so that dilatory litigants might put themselves in order and avoid delay. They do not, however, completely, estop a court from taking note of events and circumstances which happen within the time fixed. For example, it cannot be said that, if the opponent had started with the full money ordered to be paid and came well in time but was set upon and robbed by thieves on the day previous, he could not ask for extension of time, or that the Court was powerless to extend it. Such orders are not like the law of the Medes and the Persians."

(ii) In Chinnamarkathian V/s. Ayyavoo, AIR 1982

SC 137, the Hon'ble Supreme Court has observed :-

"It is a well accepted principle statutorily recognized in Section 148 of Civil P.C. that where a period is fixed or granted by the court for doing any act prescribed or allowed by the Code, the Court may in its discretion from time to time enlarge such period even though the period originally fixed or granted may expire. If a Court in exercise of the jurisdiction can grant time to do a thing, in the absence of a specific provision to the contrary curtailing, denying or withholding such jurisdiction, the jurisdiction to grant time would inhere in its ambit the jurisdiction to extend time initially fixed by it. Passing a composite order would be acting in disregard of the jurisdiction in that while granting time simultaneously the court denies to itself the jurisdiction to extend time. The

principle of equity is that when some circumstances are to be taken into account for fixing a length of time within which a certain action is to be taken the court retains to itself the jurisdiction to re examine the alteration or modification of circumstances which may necessitate extension of time. If the Court by its own act denies itself the jurisdiction to do so, it would be denying to itself the jurisdiction which in the absence of a negative provision, it undoubtedly enjoys conditional orders were held by this court to be in terrorem, so that dilatory litigants might put themselves in order and avoid delay, but they do not completely estop a court from taking note of events and circumstances which happen within the time fixed."

24. However, in spite of being aware that the petitioner was required to comply the order below the application (Exhibit 46), he has filed this application, at this stage. No acceptable explanation is coming on record by the petitioner why this was not done earlier. Due to negligence on the part of the petitioner, the Opponents have unnecessarily suffered and matter has lingered. The petitioner cannot escape from his liability by merely filing such application at this stage.

25. This non-action in that regard is unexplained and without any legal and valid reason. Therefore, this is a fit case in which the opponents need to be compensated by awarding suitable costs along with state i.e. the Taluka Legal Services Authority, as directed from time to time by the Hon'ble Supreme Court and the Honb'le High Court. The cost is quantified at Rs. 500/- (Rs. Five Hundred only), considering the nature of the petition, delay caused and the overall conduct of the petitioner and the stage of this petition.

26. Accordingly, I answer Point No. 1 in the affirmative and

point No. 2 as application granted as per final order.

27. In the result, order.

ORDER.

1.	The application (Exhibit 48) is granted by setting aside the order of 'rejection' passed against the petitioner below the application (Exhibit 46), subject to costs of Rs. 500/- (Rs. Five Hundred only) in addition to previous unpaid cost, if any, to be deposited in the Court on or before 21/03/2024, failing which the application shall stand rejected, automatically.		
2.	The cost awarded vide this order shall be apportioned as herein below :-		
	a)	The Opponent No. 3.	Rs. 450/- (Rs. Four Hundred Fifty only).
	b)	The Taluka Legal Services Authority, Pandharpur.	Rs. 50/- (Rs. Fifty only).

(Pronounced in the Open Court).

Sd/-
(M. B. Lambe),
Member,

Motor Accident Claims Tribunal,
Pandharpur.

Date : 20/02/2024.

C E R T I F I C A T E

I affirm that the contents of this PDF file Judgment is same word to word as per the original Judgment.

- (a) Name of the Stenographer : Sou. M. M. Kulkarni
- (b) Court : M. B. Lambe,
District Judge – 1 &
Addl. Sessions Judge, Pandharpur.
- (c) Judgment signed by P.O. on : 20/02/2024
- (d) Judgment uploaded on : 20/02/2024